

STATE OF MARYLAND * IN THE CIRCUIT COURT
 * FOR BALTIMORE
v. * COUNTY
STEPHEN W. WHALEN, JR. * Criminal No. : 03-K-12-007256

STATEMENT OF FACTS

The defendant, Stephen W. Whalen, Jr., is a real estate developer who operates his business and develops properties primarily in Baltimore County, Maryland and is particularly active in developing properties in the Catonsville area. Catonsville is in Baltimore County Council District One, and is represented on the County Council by Councilman Tom Quirk, who was elected to that position in the 2010 election.

During the 2014 election cycle, which began on January 1, 2011 and will end on December 31, 2014, the defendant, through a company owned and controlled by him known as Whalen Properties Limited Liability Company, Catonsville, Series XV, was seeking approval by the County to develop a parcel of vacant land in Catonsville on Kenwood Avenue near the Beltway, a project known as the Southwest Physicians Pavilion. He was seeking to have Baltimore County approve the project as a Planned Urban Development (also known as a PUD). Designation of a project as a PUD provides the developer greater flexibility under the zoning, building and development laws, regulations and procedures of the County.

The PUD process required that the project be submitted to the Councilperson in the district in which it is located (in this case, Councilman Quirk) and that a public input meeting be held before the formal PUD approval process could commence. That process could begin

only if, following the local councilperson's review and the initial public input hearing, the Councilman for the district where the project was to be located sponsored, and the Council passed, a Resolution permitting consideration of the PUD for approval by the County.

In August of 2011 the defendant's plans for the Southwest Physicians Pavilion PUD were being reviewed by Councilman Quirk to determine whether he should introduce a resolution allowing the PUD process to continue on that project. The County's comprehensive rezoning process was to commence on September 1, 2011, during which all council members had agreed not to raise campaign funds.

On August 8, 2011, the defendant sent Councilman Quirk an e-mail declining an invitation to attend an event at the Maryland Association Counties (MACO) meeting in Ocean City, Maryland on August 18, 2011, saying "Thanks, Tom, but I have too much damn work to do in the next 30 days...something about a PUD...whatever that is...". Councilman Quirk replied on the same day, saying "here's another event I'm doing in Lansdowne on 8/27 at Leadership Through Athletics if you can stop by or help sponsor. How do things look with the PUD? How's Planning?". A copy of a flyer announcing a fundraising event for Quirk to be held on August 27, 2011 was attached.

On August 24, 2011, at about 10:21, pm, Councilman Quirk, via e-mail to the defendant, expressed concern about how his campaign fund report would look next to that of Councilman Marks, saying, in part, "Steve-let's meet up real soon and talk about Marks event and how his report will look vs. mine....". At approximately 10:27 pm, the defendant replied (in pertinent part) "Happy to do so whenever you'd like, Tom. Pick one day next week...if you want to jump on this soon, it should be next week, unless you want to wait til the last few days of September....Whatever I can do, of course. Steve." Councilman Quirk

replied "I was hoping all the new members would be close in reports. That clearly has been unbalanced now."

At 10:55 pm, the defendant responded (in part) "Wait a minute, Tom. You HAVE a fundraiser this Saturday. That is a big opportunity...IF you want to make it so, even at this late date. We can help you, completely legally of course within the bounds of campaign finance requirements, raise some \$\$\$ to boost the returns shown for this event. Maybe it takes an extra week or two for the \$\$ to trickle in afterwards, but, so what?" Let me find out what Scott raised for our Fifth District friend tonite, and see if we can't get you to approximately the same ballpark....".

On August 25, 2011, at approximately 6:15 pm, the Defendant sent an e-mail to Councilman Quirk, saying:

"Whenever you want, Tom. You da boss. And, FYI, I talked to Scott B. a couple hours ago. The DM [David Marks] fundraiser brought in 'just under \$15K'. More than I thought but less than you did. The truth usually resides somewhere in the middle, right? He will be calling you to talk a bit about the rec component at SGHC [Spring Grove State Hospital] apropos of the upcoming MEDCO study, and ...your favorite topic. If you want us to raise some \$\$ for you by next Wed, you need to let me know asap...like by tomorrow."

At about 8:50 pm Councilman Quirk replied "Yes...That would be great."

On August 30, 2011, the defendant, Stephen W. Whalen, Jr. personally withdrew \$8,500.00 in cash from the bank account of Whalen Properties via counter check.

Between August 27, 2011 and August 30, 2011, the defendant met with his personal trainer, Michelle Mandel and asked her to do him a favor. He told Ms. Mandel that it would really help him out if he could give her \$2,500.00 cash and she gave him her check for \$2,500.00 payable to the Quirk campaign. Ms. Mandel agreed to do so. She wrote a personal

check, dated August 27, 2011, payable to Friends of Tom Quirk in the amount of \$2,500.00 and gave it to the defendant in exchange for \$2,500.00 in cash. Ms. Mandel deposited the \$2,500.00 in cash received from the defendant on August 31, 2011.

Between the same dates, the defendant made the same arrangement with Darryl Hitt, an employee of Whalen properties. Mr. Hitt gave the defendant his personal check payable to Friends of Tom Quirk in the amount of \$2,500.00 dated 8/27/2011 in exchange for \$2,500.00 in cash. On August 31, 2011, Mr. Hitt deposited \$2,400.00 of that cash into his personal bank account.

On or about August 31, 2011, Diane Underwood received a telephone call from the defendant asking her to meet him. When they met he asked her to do him a favor. He gave her \$2,500.00 in cash in exchange for her personal check in that amount payable to Friends of Tom Quirk dated August 31, 2011. Ms. Underwood deposited the \$2,500.00 in cash received from the defendant to her personal bank account on September 1, 2011.

On August 31, 2011, at about noon, Councilman Quirk sent an email to the defendant saying "Today is the last day for checks to be dated. We just made a deposit. I think we could prob deposit tomorrow if needed (as long as the checks are dated today?). Let me know if you were successful with Scott or John helping or have any other ideas. Right now I'm coming in 4th. Johnny first, then Cathy Bivens, then David Marks (thanks to Scott), then me, then Vicky, then Todd, then Ken. I think. Thanks, Tom"

On August 31, 2011, the defendant personally delivered to Councilman Tom Quirk what the defendant represented to be three separate contributions to the Quirk campaign by Michelle Mandel, Diane Underwood and Darryl Hitt of \$2,500.00 each. The three checks were deposited to the account of Friends of Tom Quirk on August 31, 2011. They were

reported on the campaign fund reports of Friends of Tom Quirk as separate contributions of \$2,500.00 each from Hitt, Mandel and Underwood.

On September 1, 2011, the community input meeting for the proposed Southwest Physicians Pavilion was held. On September 19, 2011, Councilman Quirk introduced Resolution 108-11, authorizing the County to proceed with consideration of the proposed PUD. The resolution was passed unanimously by the County Council on October 17, 2011.

The Defendant, Stephen W. Whalen, was in fact the contributor of the funds purported to have been contributed by Hitt, Mandel and Underwood, which totaled \$7,500.00. The amount contributed by the defendant, therefore, exceeded the limit of \$4,000.00 in contributions to a single candidate during an election cycle by \$3,500.00. This limit on contributions is codified at § 13-226(b)(1) of the *Election Law Article* of the Annotated Code of Maryland.

In addition to the disguised contribution of \$7,500.00 to Councilman Quirk, the defendant also contributed \$4,000.00 to County Executive Kevin Kamenetz and \$250 to Friends of David Marks, in August of 2011—a total of \$11,750.00 to all candidates during the 2014 election cycle. Those contributions exceeded the the limit of \$10,000.00 to all candidates in a single election cycle by \$1,750.00. This limit on contributions is codified at § 13-226(b)(2) of the *Election Law Article* of the Annotated Code of Maryland.

Councilman Quirk and the defendant, Stephen W. Whalen, Jr. (through his counsel), cooperated with investigators. No evidence was uncovered indicating that Councilman Quirk or his campaign officers were aware that the three checks from Mandel, Hitt and Underwood were anything other than independent contributions by those three individuals to the Quirk campaign.